

**JUL 28 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL ANGEL RAMOS-  
CONTRERAS,

Defendant - Appellant.

No. 05-30065

D.C. No. CR-04-00113-WFN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Wm. Fremming Nielsen, Senior Judge, Presiding

Submitted July 24, 2006\*\*

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Miguel Angel Ramos-Contreras appeals from the 77-month sentence imposed after his guilty-plea conviction for illegal re-entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

we affirm.

The district court did not err in applying an enhancement pursuant to 8 U.S.C. § 1326(b)(2) based on Ramos-Contreras' prior felony drug trafficking conviction. The fact of a prior conviction does not need to be admitted by the defendant or proven to a jury beyond a reasonable doubt for purposes of sentencing. *See United States v. Booker*, 543 U.S. 220, 244 (2005); *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (noting the continuing vitality of *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998)).

The district court did not err in denying a downward departure for early disposition, because the prosecutor did not make such an offer. *See United States v. Marcial-Santiago*, 447 F.3d 715, 717-18 (9th Cir. 2006) (holding sentence was not unreasonable where defendant was denied downward departure for early disposition in a district that had not implemented a fast-track program). Similarly, the district court was not required to grant a downward departure due to Ramos-Contreras' concession of deportation. *See United States v. Martinez-Ramos*, 184 F.3d 1055, 1058 (9th Cir. 1999) (holding that "deportable status may not be a ground for downward departure from the applicable guideline range" for aliens convicted under 8 U.S.C. § 1326).

Finally, the district court properly calculated the guidelines range and

considered the appropriateness of that range as applied to Ramos-Contreras in light of the statutory factors enumerated in 18 U.S.C. § 3553(a). The sentence imposed by the district court was reasonable. *See United States v. Plouffe*, 436 F.3d 1062, 1063 (9th Cir. 2006).

**AFFIRMED.**